IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 1214/1998

SIYA RAM & OTHERS
v
STATE OF RAJASTHAN

Date of Judgment: **JULY 16, 2007**

Hon'ble Mr. Justice R. S. Chauhan

Mr. Rajnish Gupta for the petitioners.
Mr. B.K. Sharma, Public Prosecutor.

By Court:

The petitioners have challenged the order dated 17.6.98 passed by the Addl. Civil Judge (Junior Division) Cum Judicial Magistrate, Karauli by which the learned Magistrate has taken cognizance for an offence under Section 376 IPC and has issued non-bailable warrants against the petitioners.

The brief facts of the case are that one Smt. Kaveri submitted a complaint before the learned Magistrate wherein she claimed that on 6.2.94 at four O' Clock in the evening, she had gone to her fields for collecting fodder for her animals. While she was collecting fodder, the petitioners entered her field and Siya Ram, petitioner No.1, caught hold of her and

threw her on the ground. He pulled out a knife and placed it on her chest. Therefore, she could not cry for any help. Thereafter, Siya Ram, Raju Ram and Harkesh raped her. After the alleged rape when she shouted for help Shri Batasiya and Shri Kadu run to her rescue. However, by that time the three petitioners had rushed away. The said complaint was sent to the police under Section 156(3) of the Cr.P.C. After a thorough investigation the police submitted a negative Final Report ('F.R.' for short) in the said case. The notice was issued to the prosecutrix who submitted a protest petition. The statement of the prosecutrix Kaveri, and of her witnesses Kadu, Batasiya and of the medical doctor who had examined the injuries of the prosecutrix, Dr. Govind Prasad Gupta, were recorded. After going through the statements recorded and after perusing the negative F.R., submitted by the police, vide order dated 17.6.98, the learned Magistrate took cognizance against the petitioners for offence under Section 376 IPC and issued non-bailable warrants of arrest against them. Hence, this petition before this court.

Mr. Rajnish Gupta, learned counsel for the

petitioners, has argued that a large number of litigation and dispute existed between the husband of Smt. Kaveri and the petitioners. Therefore, a false case has been lodged against the petitioners. Secondly, that the learned Magistrate has not given any reason for disagreeing with the negative F.R.

On the other hand, Mr. B.K. Sharma, learned Public Prosecutor, has drawn our attention to the statements of the prosecutrix and the statement of her witnesses to argue that prima facie the offence under Section 376 IPC is clearly made out. Moreover, the learned Magistrate has given cogent reasons for disagreeing with the negative F.R. Therefore, he has supported the impugned order.

We have heard the learned counsels for the parties and have perused the record which has been produced before this court.

A bare perusal of the statement of the prosecutrix given under Section 200 Cr.P.C., does make out a prima facie case against the petitioners. Her statement is further corroborated by the statement of Shri Batasiya and Shri Kadu

and by the medical evidence deposed by Dr. Govind Prasad Gupta. Since a prima facie case appears to exist, the learned Magistrate was certainly justified in taking cognizance for the offence under Section 376 IPC.

Vide order dated 2.11.98, this Court had directed the petitioners to appear before the concerned court and the concerned court was directed to release the petitioners on a personal bond. According to Mr. Gupta, the learned counsel for the petitioners, the said order has already been implemented and the petitioners have been released on bail by the concerned court.

Although we confirm the impugned order dated 17.6.98 passed by the learned Magistrate but we direct that the petitioners should not be arrested as they have been granted benefit of bail by the concerned court in view of the order dated 2.11.98 passed by this court. Moreover, as nine long years have lapsed, we direct the trial court to decide the case at the earliest. The petition is accordingly disposed of.

(R.S. CHAUHAN) J.

MRG.